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1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2595

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April 23, 1992

BY HAND DELIVERY

Donna R. Searcy,
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

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APR 23 1992

RE: Motorola Satellite Communications, Inc. Request for
Pioneer's Preference, ET Docket No. 92-28 (PP-32).

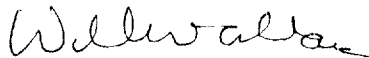
Federal Communications Commission
Office of the Secretary

Dear Ms. Searcy:

Transmitted for filing in the above referenced-docket, on behalf of Loral Qualcomm Satellite Services, Inc., are an original and four copies of its "Motion to Strike and Opposition to Supplement to Request for Pioneer's Preference."

Should there be any questions regarding this matter, please contact this office.

Very truly yours,



William D. Wallace
(Member of Florida Bar only)

Attachments

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 23 1992

Federal Communications Commission
Office of the Secretary

In the Matter of:

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Request for Pioneer's
Preference to Establish a
Low-Earth Orbit Satellite
System in the 1610-1626.5 MHz
Band

ET Docket No. 92-28

File No. PP-32

To: Office of Engineering and Technology

**MOTION TO STRIKE AND
OPPOSITION TO SUPPLEMENT TO
REQUEST FOR PIONEER'S PREFERENCE**

Loral Qualcomm Satellite Services, Inc. ("LQSS"), pursuant to Section 1.45 of the Commission's Rules, hereby files a motion to strike and an opposition to the Supplement to Request for Pioneer's Preference and the attachments to it filed by Motorola Satellite Communications, Inc. ("Motorola") on April 10, 1992 (Preference Supplement).^{1/}

Motorola filed its Preference Supplement to enhance its initial request for a pioneer's preference for its Iridium satellite system and to urge the Commission to grant that request. LQSS has opposed grant of a pioneer's preference for the Motorola

^{1/} LQSS is an applicant for authority for a low earth orbit (LEO) RDSS system called GLOBALSTAR. LQSS is also seeking a pioneer's preference for its GLOBALSTAR system.

proposal.^{2/} LQSS now moves to strike the majority of the April 10, 1992 Supplement, for reasons described below, and opposes acceptance of it.

The Preference Supplement was filed on April 10, 1992, apparently in response to the deadline established in a Public Notice, Mimeo No. 22205 (March 11, 1992) for filing pioneer's preference requests for LEO systems above 1 GHz.^{3/} This filing was made two days after the April 8, 1992 deadline for comments on previously-filed pioneer's preference requests.^{4/} Because this filing relates to the earlier-filed request, it should have been made by April 8, 1992. It is therefore untimely and should be rejected on that basis.

In the Preference Supplement, Motorola repeats the description of the Iridium system previously given in its application and in numerous pleadings, repeats claims about the technical performance of the system made in its preference request and elsewhere, rehearses the "history" of the system, repeats its claims about the "innovativeness" and "feasibility" of the system, and again claims a nationwide preference is justified. The Preference Supplement is accompanied by an inch and one-half of attachments. These attachments consist of about 200 pages of news clippings, a description of the Iridium system prepared by Dr.

2/ Opposition to Motorola's Request for Pioneer's Preference (filed April 8, 1992).

3/ Preference Supplement, at 1 n.1.

4/ See Public Notice, Mimeo No. 22153 (March 9, 1992).

Raymond J. Leopold of Motorola, and descriptions of two patents held by Motorola, Inc.

The descriptions, technical claims with respect to and claims about the history, "innovativeness," and "feasibility" of Iridium, and purported justification of a "nationwide" preference (a monopoly) are repetitive, and should be stricken.

In addition, those attachments which consist of news articles should be stricken, as they have no probative value. Such articles do not establish anything other than that Motorola has a substantial public relations budget and an effective public relations apparatus; they do not have any bearing on issues such as "innovativeness" or "feasibility."^{5/}

The self-generated "scientific" description should also be stricken as lacking probative value and relevance. It is not only self-promotion, but is repetitive of material previously submitted to the Commission in multiple filings.

^{5/} Attachment A consists of news accounts between June 26, 1990 and July 2, 1990. Apparently Motorola intends to use this material to counter Ellipsat's claim that it was first to file a LEO application by claiming Motorola was developing its system in 1990. This claim, even if correct, is irrelevant. Other applicants, including LQSS, were developing systems in 1990. The fact that they did not publicize them (and Motorola did) does not show that Motorola was "innovative" or "first" in this regard. Attachment F consists of articles about Iridium after June, 1990, which because of their numerosity, Motorola says establish "the innovative nature of [its] contribution." *Id.* at 9. This claim is silly on its face. The articles simply show that Motorola chose to, and effectively did, promote its system. Moreover, "innovativeness" is an issue for Commission, not news media, determination. Were it otherwise, pioneer's preferences could be won in the press, not in the Commission's administrative processes.

With respect to the two included patents, Motorola has provided no explanation for its untimely submission of them,^{6/} and accordingly, LQSS opposes acceptance of or reliance on them.^{7/} (With respect to patent applications and other data for which Motorola is requesting confidential treatment, LQSS is filing a separate pleading objecting to the blatant and improper attempt to turn the preference proceeding into a comparative hearing without rules by inducing the Commission to review material which mutually exclusive applicants cannot see, evaluate, or comment on.)

To protect the Commission's processes from repetitive, unnecessary, and untimely pleadings, to prevent use of material with no probative value, and to preserve the rights of mutually exclusive applicants to fairness and the process, the Supplemental

^{6/} U.S. Patent No. 5,017,925 was issued May 21, 1991 (nearly one year ago, and two months prior to the filing by Motorola of its initial pioneer's preference request). Preference Supplement, at 7 n.12. U.S. Patent No. 5,095,538 was issued March 10, 1992 (one month prior to Motorola's filing of comments in support of that request). Id. at 8 n.13. This timing indicates that Motorola is attempting to get multiple bites of the apple by making multiple, repetitive and untimely filings.

^{7/} The probative value of granted patents in the pioneer's preference context is as yet unresolved. Cf. GTE's Comments in Opposition to CELSAT's Pioneer's Preference Request, at 4 n.7 (filed April 8, 1992) ("One measure of innovation is the amount of intellectual property involved from the Applicant").

Preference and attachments to it should be stricken and/or not accepted in this proceeding.^{8/}

Respectfully submitted,

LORAL QUALCOMM SATELLITE SERVICES, INC.

By: Linda K. Smith (wdw)
Linda K. Smith
Robert M. Halperin
William D. Wallace
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2500

By: Leslie A. Taylor (wdw)
Leslie A. Taylor
LESLIE TAYLOR ASSOCIATES
6800 Carlynn Court
Bethesda, MD 20817
(301) 229-9341

Its Attorneys

Dated: April 23, 1992

^{8/}

In the event the Commission denies LQSS's motion to strike and opposition to the Motorola's Preference Supplement, then it should accord LQSS and other interested parties reasonable additional time to review and analyze the materials in the Preference Supplement and to comment on the applicability of these materials to Motorola's request for a pioneer's preference.

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 23rd day of April, 1992, caused copies of the foregoing "Motion To Strike And Opposition To Supplement To Request For Pioneer's Preference" to be served by hand delivery (as indicated with *) or by U.S. mail, postage prepaid, to the following:

*Chairman Alfred C. Sikes
Federal Communications
Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications
Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Sherrie P. Marshall
Federal Communications
Commission
Room 826
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications
Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications
Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*William Torak
Deputy Chief
Spectrum Engineering Div.
Federal Communications
Commission
Room 7130
2025 M Street, N.W.
Washington, D.C. 20554

Gary M. Epstein, Esq.
James F. Rogers, Esq.
Kevin C. Boyle, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D. C. 20004-2504

Robert A. Mazer, Esq.
Albert Shuldiner, Esq.
Nixon, Hargrave, Devans
& Doyle
One Thomas Circle, N.W.
Suite 800
Washington, D.C. 20005

Jill Abeshouse Stern, Esq.
Shaw Pittman, Potts & Trowbridge
2300 N Street, N.W., 2nd Floor
Washington, D.C. 20037

Philip L. Malet, Esq.
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

Veronica Haggart, Esq.
Vice President & Director
Regulatory Affairs
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005

Norman P. Leventhal, Esq.
Raul Rodriguez, Esq.
Stephen D. Baruch, Esq.
Leventhal, Senter & Lerman
2000 K Street, N. W.
Suite 600
Washington, D.C. 20006

James G. Ennis, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036

Hollis G. Duesing, Esq.
The Association for American
Railroads
50 F Street, N.W.
Washington, D.C. 20001

J. Ellis McSparran
President
3S Navigation
23141 Plaza Pointe Drive
Laguna Hills, CA 92653

Dr. Robert L. Riemer
Committee on Radio Frequencies
HA-562
National Research Council
2101 Constitution Ave., N.W.
Washington, D.C. 20418

Eleanor C. Leung
Satellite CD Radio, Inc.
800 K Street N.W.
Suite 750
Washington, D.C. 20001

Bruce D. Jacobs, Esq.
Glen Richards
Fisher, Wayland, Cooper &
Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

*Cecily C. Holliday
Satellite Radio Branch
Federal Communications
Commission
2025 M Street, N.W.
Room 6010
Washington, D.C. 20036

*Richard M. Firestone
Chief, Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Lon C. Levin, Esq.
Vice President and Regulatory
Counsel
AMSC
1150 Connecticut Ave., N.W.
4th Floor
Washington, D.C. 20036

Victor J. Toth, Esq.
2719 Soapstone Drive
Reston, Virginia 22091

Cheryl Lynn Schneider, Esq.
Communications Satellite
Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

William K. Keene, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

*Thomas P. Stanley
Chief Engineer
Federal Communications
Commission
2025 M Street, N.W.
Suite 7002
Washington, D.C. 20554

*Fern J. Jarmulnek
Federal Communications
Commission
2025 M Street, N.W.
Room 6324
Washington, D.C. 20554

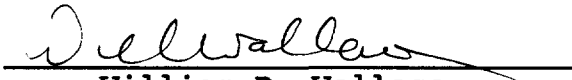
*Raymond LaForge
Federal Communications
Commission
2025 M Street, N.W.
Room 7334
Washington, D.C. 20554

***Wendell R. Harris**
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications
Commission
2025 M Street, N.W.
Room 6010
Washington, D.C. 20554

John L. Bartlett
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

***Thomas Tycz**
Common Carrier Bureau
Federal Communications
Commission
2025 M Street, N.W.
Room 6010
Washington, D.C. 20554

***James R. Keegan**
Chief, Domestic Facilities
Division
Federal Communications
Commission
2025 M Street, N.W., Room 6010
Washington, D.C. 20554



William D. Wallace